

**ASSEMBLY BILL**

**No. 358**

**Introduced by Assembly Member Jackson**

February 11, 2003

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An act to amend Sections 1419, 1420, and 1422 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as introduced, Jackson. Health facilities: licensing.

Existing law requires the State Department of Health Services to administer provisions relating to the licensing of long-term health care facilities. Existing law also requires the department to establish a centralized consumer response unit in the Licensing and Certification Division of the department that responds to consumer inquiries and complaints.

Existing law requires that upon receipt of a written or oral complaint, the department is required to assign an inspector to make a preliminary review and promptly inform the complainant on the department's proposed course of action.

This bill would require the department to notify the complainant of the department's proposed course of action within 10 working days of receipt of the complaint. This bill would also require that a final determination of the complaint be completed within 30 working days of receipt of the complaint by the department.

This bill would make other conforming changes in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1419 of the Health and Safety Code is amended to read:

1419. (a) The department shall establish a centralized consumer response unit within the Licensing and Certification Division of the department to respond to consumer inquiries and complaints.

(b) Upon receipt of consumer inquiries, the unit shall offer assistance to consumers in resolving concerns about the quality of care and the quality of life in long-term health care facilities.

This assistance may include, but shall not be limited to, all of the following:

(1) Offering to provide to consumers education and information about state licensing and federal certification standards, resident rights, name and address of facilities, referral to other entities as appropriate, and facility compliance history.

(2) Offering to participate in telephone conference calls between consumers and providers to resolve concerns within the scope of the authority of the department. If the inquiry or concern is determined to ~~warrant an onsite investigation, the inquiry or concern~~ be a complaint as defined by subdivision (f) of Section 1420 it shall be considered a complaint and handled pursuant to the complaint investigation process set forth in Section 1420.

(3) Initiating onsite investigations in response to oral or written complaints made pursuant to this section if the unit determines that there is a reasonable basis to believe that the allegations in the complaints describe one or more violations of state law by a long-term care facility.

(c) Nothing in subdivision (a) or (b) shall preclude the department from taking any or all enforcement actions available under state or federal law.

(d) Any person may request an inspection of any long-term health care facility in accordance with this chapter by giving to the department oral or written notice of an alleged violation of applicable requirements of state law. Any written notice may be signed by the complainant setting forth with reasonable particularity the matters complained of. Oral notice may be made by telephone or personal visit. Any oral complaint shall be reduced to writing by the department. The substance of the complaint shall

1 be provided to the licensee no earlier than at the commencement  
2 of the inspection.

3 (e) Neither the substance of the complaint provided the  
4 licensee nor any copy of the complaint or record published,  
5 released, or otherwise made available to the licensee shall disclose  
6 the name of any individual complainant or other person mentioned  
7 in the complaint, except the name or names of any duly authorized  
8 officer, employee, or agent of the ~~state~~ department conducting the  
9 investigation or inspection pursuant to this chapter, unless the  
10 complainant specifically requests the release of the name or names  
11 or the matter results in a judicial proceeding.

12 SEC. 2. Section 1420 of the Health and Safety Code is  
13 amended to read:

14 1420. (a) (1) Upon receipt of a written or oral complaint, the  
15 ~~state~~ department shall assign an inspector to make a preliminary  
16 review of the complaint and shall notify the complainant within  
17 two working days of the receipt of the complaint of the name of  
18 the inspector. Unless the ~~state~~ department determines that the  
19 complaint is willfully intended to harass a licensee or is without  
20 any reasonable basis, it shall make an onsite inspection or  
21 investigation within 10 working days of the receipt of the  
22 complaint. In any case in which the complaint involves a threat of  
23 imminent danger of death or serious bodily harm, the ~~state~~  
24 department shall make an onsite inspection or investigation within  
25 24 hours of the receipt of the complaint. In any event, the  
26 complainant shall be ~~promptly~~ informed *within 10 working days*  
27 *of receipt of the complaint* of the ~~state~~ department's proposed  
28 course of action and of the opportunity to accompany the inspector  
29 on the inspection or investigation of the facility. Upon the request  
30 of either the complainant or the ~~state~~ department, the complainant  
31 or his or her representative, or both, may be allowed to accompany  
32 the inspector to the site of the alleged violations during his or her  
33 tour of the facility, unless the inspector determines that the privacy  
34 of any patient would be violated thereby.

35 (2) When conducting an onsite inspection or investigation  
36 pursuant to this section, the ~~state~~ department shall collect and  
37 evaluate all available evidence and may issue a citation based  
38 upon, but not limited to, all of the following:

39 (A) Observed conditions.

40 (B) Statements of witnesses.

1 (C) Facility records.

2 (3) *A final determination as a result of the inspection or*  
3 *investigation of the complaint shall be completed within 30*  
4 *working days of receipt of the complaint by the department.* Within  
5 10 working days of the completion of the complaint investigation,  
6 the ~~state~~ department shall notify the complainant and licensee in  
7 writing of the department's determination as a result of the  
8 inspection or investigation.

9 (b) Upon being notified of the ~~state~~ department's determination  
10 as a result of the inspection or investigation, a complainant who is  
11 dissatisfied with the ~~state~~ department's determination, regarding  
12 a matter which would pose a threat to the health, safety, security,  
13 welfare, or rights of a resident, shall be notified by the ~~state~~  
14 department of the right to an informal conference, as set forth in  
15 this section. The complainant may, within five business days after  
16 receipt of the notice, notify the director in writing of his or her  
17 request for an informal conference. The informal conference shall  
18 be held with the designee of the director for the county in which  
19 the long-term health care facility which is the subject of the  
20 complaint is located. The long-term health care facility may  
21 participate as a party in this informal conference. The director's  
22 designee shall notify the complainant and licensee of his or her  
23 determination within 10 working days after the informal  
24 conference and shall apprise the complainant and licensee in  
25 writing of the appeal rights provided in subdivision (c).

26 (c) If the complainant is dissatisfied with the determination of  
27 the director's designee in the county in which the facility is  
28 located, the complainant may, within 15 days after receipt of this  
29 determination, notify in writing the Deputy Director of the  
30 Licensing and Certification Division of the ~~state~~ department, who  
31 shall assign the request to a representative of the Complainant  
32 Appeals Unit for review of the facts that led to both  
33 determinations. As a part of the Complainant Appeals Unit's  
34 independent investigation, and at the request of the complainant,  
35 the representative shall interview the complainant in the district  
36 office where the complaint was initially referred. Based upon this  
37 review, the Deputy Director of the Licensing and Certification  
38 Division of the ~~state~~ department shall make his or her own  
39 determination and notify the complainant and the facility within  
40 30 days.

(d) Any citation issued as a result of a conference or review provided for in subdivision (b) or (c) shall be issued and served upon the facility within three working days of the final determination, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant by registered or certified mail.

(e) A miniexit conference shall be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. In any matter in which there is a reasonable probability that the identity of the complainant will not remain anonymous, the ~~state~~ department shall also notify the facility that it is unlawful to discriminate or seek retaliation against a resident, employee, or complainant.

(f) For purposes of this section, “complaint” means any oral or written notice to the ~~state~~ department, other than a report from the facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute such a violation.

SEC. 3. Section 1422 of the Health and Safety Code is amended to read:

1422. (a) The Legislature finds and declares that it is the public policy of this state to assure that long-term health care facilities provide the highest level of care possible. The Legislature further finds that inspections are the most effective means of furthering this policy. It is not the intent of the Legislature by the amendment of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982 to reduce in any way the resources available to the ~~state~~ department for inspections, but rather to provide the ~~state~~ department with the greatest flexibility to concentrate its resources where they can be most effective.

(b) (1) Without providing notice of these inspections, the ~~state~~ department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to Section ~~1419–1420~~, conduct inspections annually, except with regard to those facilities which have no class “AA,” class “A,” or class “B” violations in

1 the past twelve months. The ~~state~~ department shall also conduct  
2 inspections as may be necessary to assure the health, safety, and  
3 security of patients in long-term health care facilities. Every  
4 facility shall be inspected at least once every two years. The  
5 department shall vary the cycle in which inspections of long-term  
6 health care facilities are conducted to reduce the predictability of  
7 the inspections.

8 (2) The ~~state~~ department shall submit to the federal Department  
9 of Health and Human Services on or before July 1, 1985, for  
10 review and approval, a request to implement a three-year pilot  
11 program designed to lessen the predictability of the long-term  
12 health care facility inspection process. Two components of the  
13 pilot program shall be (A) the elimination of the present practice  
14 of entering into a one-year certification agreement, and (B) the  
15 conduct of segmented inspections of a sample of facilities with  
16 poor inspection records, as defined by the ~~state~~ department. At the  
17 conclusion of the pilot project, an analysis of both components  
18 shall be conducted by the ~~state~~ department to determine  
19 effectiveness in reducing inspection predictability and the  
20 respective cost benefits. Implementation of this pilot project is  
21 contingent upon federal approval.

22 (c) Except as otherwise provided in subdivision (b), the ~~state~~  
23 department shall conduct unannounced direct patient care  
24 inspections at least annually to inspect physician and surgeon  
25 services, nursing services, pharmacy services, dietary services,  
26 and activity programs of all the long-term health care facilities.  
27 Facilities evidencing repeated serious problems in complying with  
28 this chapter or a history of poor performance, or both, shall be  
29 subject to periodic unannounced direct patient care inspections  
30 during the inspection year. The direct patient care inspections shall  
31 assist the ~~state~~ department in the prioritization of its efforts to  
32 correct facility deficiencies.

33 (d) All long-term health care facilities shall report to the ~~state~~  
34 department any changes in the nursing home administrator or the  
35 director of nursing services within 10 calendar days of the changes.

36 (e) Within 90 days after the receipt of notice of a change in the  
37 nursing home administrator or the director of nursing services, the  
38 ~~state~~ department may conduct an abbreviated inspection of the  
39 long-term health care facilities.

1 (f) If a change in a nursing home administrator occurs and the  
2 Board of Nursing Home Administrators notifies the ~~state~~  
3 department that the new administrator is on probation or has had  
4 his or her license suspended within the previous three years, the  
5 ~~state~~ department shall conduct an abbreviated survey of the  
6 long-term health care facility employing that administrator within  
7 90 days of notification.

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